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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE ANDERSON,

Defendant and Appellant.

D074666

(Super. Ct. No. SCN387448)

APPEAL from a judgment of the Superior Court of San Diego County, William Y. Wood, Judge. Affirmed.

Stephanie M. Adraktas, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

This case arises from an argument between George Anderson and his girlfriend S.T. In that argument S.T. grabbed Anderson's cell phone and threw it to the ground. In

return he hit her in the face causing substantial injury, including the loss of a tooth. Anderson pleaded guilty to one count of inflicting corporal injury on a person with whom he was in a dating relationship. (Pen. Code § 273.5<sup>1</sup>, subd. (a).) Anderson was sentenced to a two-year term in prison. Following a contested restitution hearing, the court imposed restitution in the amount of \$4,583 to compensate the victim for lost wages and the estimated cost of replacing the tooth with a dental implant.

Anderson appeals, challenging only the restitution order. He does not dispute the extent of S.T.'s injuries or that he inflicted them. Anderson contends the court should have allowed him to explore the victim's behavior leading up to the injury and that he should have been able to offset the cost for his damaged phone against the restitution payable to the victim. We will find no error and affirm.<sup>2</sup>

## DISCUSSION

### A. The Restitution Hearing

The victim testified she lost 33 hours of work at \$15 per hour. The dentist's estimate for replacing her lost tooth was \$4,088. On cross examination, Anderson sought to explore the victim's action preceding the assault. Counsel offered an equity theory that she would not have been punched had she not damaged Anderson's phone. Anderson did not dispute he knocked her tooth out when he struck the victim in the face. The court rejected the "equity" argument since the victim was entitled to compensation for her

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> In light of the limited issues on this appeal we will omit a formal statement of facts.

losses. The "equity" argument is not clearly advanced on appeal, but appellant's opening brief comes close. It argues Anderson should not be required to pay for the victim's losses ". . . that would not have occurred if it were not for her own actions in attacking appellant and smashing his cell phone." The argument is somewhat like "she had it coming."

The trial court did ultimately watch the video of the incident and did see the victim throw Anderson's cell phone and saw Anderson "slug[] [the victim] in the mouth after she threw his phone."

Anderson also attempted to establish the value of the damaged cell phone. His argument was he should have an offset against the victim's restitution amount. The court rejected Anderson's questions as irrelevant to the question of the amount of restitution required to compensate her for the losses incurred as a result of Anderson's criminal actions. The court found the proper amount of restitution was \$4,583.

### B. Legal Principles

Section 1202.4 provides: "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of the loss claimed by the victim or victims or any other showing to the court. (§ 1202.4, subd. (f).)

Victim restitution is mandated in California. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045; *People v. Phelps* (1996) 41 Cal.App.4th 946, 950.) The

victim's right to restitution should be liberally construed. (*People v. Williams* (2010) 184 Cal.App.4th 142, 147.)

When the People establish a prima facie case showing the amount of the victim's losses, the burden shifts to the defendant to demonstrate that a different amount is proper. (*People v. Sy* (2014) 223 Cal.App.4th 44, 62-63.)

We review the trial court's decision to order an amount of restitution under the abuse of discretion standard. We will only set such decision aside where there is a clear showing of abuse. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.)

### C. Analysis

Anderson essentially seeks to invoke principles of comparative fault, based on his argument that he would not have "slugged" her if she had not provoked him. Thus, her injuries are partially her own fault and he should get a pro rata reduction in the amount of restitution ordered. In support of his argument, Anderson relies on *People v. Millard* (2009) 175 Cal.App.4th 7 (*Millard*). We find the *Millard* decision does not aid Anderson in this case.

*Millard* involved a traffic accident in which the defendant, while drunk struck the victim's motorcycle. (*Millard, supra*, 175 Cal.App.4th at pp. 13-15.) At the restitution hearing the trial court found the victim's negligence was 25 percent of the fault for the collision. The restitution amount was reduced accordingly. *Millard* does not apply here.

In this case it does appear there was conflict between the victim and Anderson. At some point she threw his phone and he struck her in the mouth with such force that he knocked out a tooth and inflicted other injuries. He pleaded guilty to a felony offense for

the unlawful assault on the victim. His argument that she provoked him into an intentional felony assault does not give rise to a comparative fault analysis. In *Millard*, there was a factual finding that the victim's negligence was a contributing cause of the collision. The argument "she made me mad, so I unlawfully attacked her with physical force" does not represent a contributing cause. It is simply the defendant's excuse for his intentionally violent behavior.

Anderson received notice of the restitution being sought and had a full and fair hearing. He was not entitled to pursue legally irrelevant theories by improper questions. There is no authority in California which would permit reduction of otherwise lawful restitution to the victim because the victim made the defendant mad before he attacked her. The court did not abuse its discretion in its evidentiary rulings nor in establishing the proper amount of restitution in this case.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.